

603 KAR 9:010. Railroad crossing closure procedure.

RELATES TO: KRS 177.120-177.130

STATUTORY AUTHORITY: KRS 177.120

NECESSITY, FUNCTION, AND CONFORMITY: KRS 177.120 requires the Transportation Cabinet to promulgate administrative regulations that contain standards governing the closure of public railway/highway grade crossings. This administrative regulation sets forth procedures the Transportation Cabinet shall follow regarding the production of a list of railroad crossings which shall be considered for closure, the evaluation of the candidate list with respect to possible closure, and the ultimate decision to recommend closure. KRS 177.120 considers that public safety will be enhanced by the closure of redundant and inherently dangerous crossings.

Section 1. Candidate Lists. (1) The Transportation Cabinet shall compose a list of candidate railroad crossings for possible closure or other appropriate action drawn from the following sources:

- (a) Responses to a letter sent to each county or local government in the Commonwealth through which railroad rights-of-way pass requesting a list of railroad crossings suggested for closure;
- (b) Responses to a letter sent to each railroad company operating in the Commonwealth requesting a list of railroad crossings suggested for closure;
- (c) Recommendations from other public or private agencies or individuals; and
- (d) Railroad crossings which the Transportation Cabinet considers candidates for closure.

(2) The Transportation Cabinet may consider any railroad crossing as a candidate for closure when:

- (a) An alternate railroad crossing is available within one-quarter (1/4) track mile in urban areas and the railroad crossing has a current average daily traffic count of 500 vehicles or less;
- (b) An alternate railroad crossing is available within one (1) track mile in rural areas and the railroad crossing has a current average daily traffic count of 150 vehicles or less; or
- (c) The railroad crossing has sight distance obstructions or other layout characteristics which create unsafe conditions and closure of the railroad crossing is an economically preferable alternative to correcting the deficiencies at the site, and an alternate crossing is available as required in paragraphs (a) and (b) of this subsection.

(3) The Transportation Cabinet shall consider action other than closure when the conditions set forth in subsection (2)(c) of this section are not met at a particular crossing, but when there are unusual safety concerns about the crossing.

Section 2. Evaluation. (1) The Transportation Cabinet's recommendation regarding a candidate railroad crossing shall include one (1) or more of the following factors:

- (a) Highway traffic flow through the railroad crossing;
- (b) Highway operating speeds through the railroad crossing;
- (c) Train traffic through the railroad crossing;

- (d) Train speed through the railroad crossing;
- (e) Character, function and type of highway traffic through the railroad crossing;
- (f) The necessity of the crossing for provision of emergency services;
- (g) Accident history at the railroad crossing for the past five (5) years;
- (h) Railroad crossing geometry including sight distance, acute crossing angle, high profile;
- (i) Type of warning device currently in place at the railroad crossing;
- (j) Condition of alternate railroad crossing surface;
- (k) Condition of alternate railroad crossing;
- (l) Distance and time to alternate railroad crossing;
- (m) Character of adjacent road network;
- (n) Reasonable access to public and private lands;
- (o) Use of the railroad crossing by pedestrians and bicycles;
- (p) Frequency of roadway blockage by trains;
- (q) Community impacts of train whistle;
- (r) Economic importance of the railroad crossing;
- (s) Development projections in the vicinity of the railroad crossing; or
- (t) Funding availability, or potential availability, for action other than closure.

(2)(a) The Transportation Cabinet may consider a number of railroad crossings as a group in evaluating the merits of closing a given railroad crossing. If many railroad crossings of a rail line exist close together, the cabinet may recommend that one (1) or more of the railroad crossings be closed, subject to other evaluation criteria.

(b) The Transportation Cabinet may perform or recommend the performance of a traffic study of the road network in the vicinity of a railroad crossing being considered for closure to analyze the effect of the closure on users of the railroad crossing and on local traffic flow.

(c) The Transportation Cabinet may evaluate a railroad crossing in terms of its economic costs and benefits, considering:

1. The railroad crossing's effects on highway and rail operations safety;
2. Changes in highway capital and maintenance costs due to closure;
3. Effects on local business operations and property values, either positive or negative;

4. Effects on rail and highway vehicle operating costs due to closure; or

5. Any other effect which may have economic impact.

Section 3. Data Verification. If the evaluation performed pursuant to Section 2 of this administrative regulation indicates that a railroad crossing is a candidate for closure, the Transportation Cabinet shall:

(1) Provide notification to the jurisdictional local government unit and appropriate railroad company of the potential for closure of the crossing;

(2) Verify elements of its information file which are critical to accurate evaluation of the particular railroad crossing. This verification shall, as available, consist of the following:

(a) Collection of updated information from local officials;

(b) Collection of updated information from officials of the affected railroad company; and

(c) Field data collection activities such as updated traffic counts at the railroad crossing.

Section 4. Public Input. (1) If based on the evaluation results of Sections 2 and 3 of this administrative regulation the Transportation Cabinet reaches a preliminary decision to recommend closure of a railroad crossing, the Transportation Cabinet may conduct public information meetings regarding the proposed railroad crossing closure in the region affected by the proposed closure.

(2) If a hearing is requested as specified in KRS 177.120(3), the Transportation Cabinet shall hold a public comment hearing in accordance with 600 KAR 1:030.

(3) The Transportation Cabinet Secretary's decision following the public hearing shall be based on the evaluation performed and information obtained in Sections 2 and 3 of this administrative regulation, subject to new information acquired through the public information and hearing process.

Section 5. Official Order. (1) If the Transportation Cabinet's final decision is to close the candidate railroad crossing, the secretary shall issue an official order to that effect.

(2) The official order shall have an effective date far enough in advance of its issuance to allow the local government unit having jurisdiction to comply with the requirements of KRS 178.050.

178.050.

(3) After the issuance of the official order by the secretary:

(a) The railroad involved shall physically remove the crossing from the tracks; and

(b) The entity maintaining the highway shall:

1. Remove or barricade the approaches to the crossing; or

2. Sign the approaches in accordance with the requirements of 603 KAR 5:050.

Section 6. Local Closures. The Transportation Cabinet's railroad crossing closure program, as mandated by KRS 177.120, shall not preclude local officials and railroad companies from pursuing railroad crossing

closure agreements independent of the cabinet's program. (19 Ky.R. 2757; Am. 20 Ky.R. 307; eff. 8-3-93; 2673; eff. 5-18-94; 21 Ky.R. 2239; 3025; eff. 6-1-95.)

603 KAR 9:020. Automatic gates at public grade crossings.

RELATES TO: KRS 189.561

STATUTORY AUTHORITY: KRS 189.561, 23 CFR Part 924

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189.561 requires the Transportation Cabinet to investigate any public grade crossing not equipped with automatic crossing gates, which has an average daily traffic volume of 4000 or more vehicles and at which two (2) or more accidents involving a train and other vehicle have occurred within a five (5) year period. Excluded are nonfatal accidents caused by mechanical failure of the motor vehicle, accidents in which the operator of the highway motor vehicle was in violation of KRS Chapter 189A, or other nonwarning signal related cause as set forth by the Transportation Cabinet in administrative regulation. This administrative regulation sets forth the list of nonwarning signal related accidents.

Section 1. Definition. "Public grade crossing" means as defined in KRS 177.010(4).

Section 2. Qualifying Accident. In evaluating the public grade crossing accident reports, the Transportation Cabinet shall exclude the reports showing the following causes or circumstances associated with the highway vehicle/train collision which are not related to a warning device:

- (1) The highway vehicle was not performing a railroad/highway crossing maneuver at the time of the collision;
- (2) The driver of the highway vehicle made a willful decision to disregard the warning that a train was approaching and to place self at risk;
- (3) The driver of the highway vehicle was warned of the approach of the train but was unable to stop the highway vehicle because of excessive speed or adverse highway conditions;
- (4) The driver of the highway vehicle left the scene of the accident prior to the investigation;
- (5) The driver of the highway vehicle was stopped on the railroad tracks prior to the approach of a train because of traffic congestion on the highway;
- (6) The highway vehicle was struck by another vehicle and propelled into the crossing; or
- (7) The driver of the highway vehicle did not hold an operator's license of the type necessary for the operation of that highway vehicle; or
- (8) The driver of the highway vehicle was not in control of the vehicle due to external circumstances such as illness.

Section 3. Abandoned Rail Line. If the rail line has been proposed for abandonment, the Transportation Cabinet shall not consider placement of automatic crossing gates unless the abandonment proposal is rejected. (21 Ky.R. 2343; Am. 2718; eff. 6-1-95.)

177.010 Definitions for KRS 177.010 to 177.890.

As used in KRS 177.010 to 177.890, unless the context otherwise requires:

- (1) "Department" means Department of Highways of the Commonwealth of Kentucky;
- (2) "Construct" includes reconstruct and improve;
- (3) "Roads" includes rural roads; highways; bridges and bridge approaches; city streets, viaducts, and bridges;
- (4) "Rural and secondary roads" includes:
 - (a) A county road as defined in KRS 178.010(1)(b);
 - (b) A publicly-owned road other than a state or federal highway, that is outside a city, town, or urban area having a population of twenty-five hundred (2,500) or more;
 - (c) A road that is classified as part of the rural secondary road system by the Department of Highways; and
- (5) "Public grade crossing" means the at-grade intersection of a railroad track or tracks and a road or highway that has been dedicated to public use and incorporated into either the state primary road system or the highway or road system of a county or municipality.

Effective: July 15, 1996

History: Amended 1996 Ky. Acts ch. 238, sec. 1, effective July 15, 1996. -- Amended 1992 Ky. Acts ch. 229, sec. 8, effective July 14, 1992. -- Amended 1964 Ky. Acts ch. 23, sec. 1. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 4356t-17-2e.

177.110 Railroad crossings -- Construction of KRS 177.120 to 177.210.

- (1) The provisions of KRS 177.120 to 177.210 shall not apply to any railroad lines or tracks constructed across primary roads after March 23, 1926.
- (2) Where railroad lines or tracks constructed after March 23, 1926 cross any primary road, the department shall determine the character of the crossing to be constructed by the railroad company, and the cost of such crossings shall be paid for by the railroad company.

Effective: October 1, 1942

History: Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 4356z-9.

177.120 Department may order elimination of grade crossings or substitution -- Standards to be set by administrative regulations -- Closure of grade crossings.

- (1) Whenever the department considers it necessary for the public safety, it may order any railroad company owning or operating a railroad in this state, to eliminate any grade crossing or change any existing overhead or underpass structure where any public road crosses the railroad tracks of the company. The department may determine whether a substitute crossing should be established and if so, the location of the crossing to be substituted, and whether it shall pass over or under the railroad tracks or intersect them at grade.
- (2) In accordance with this section, the department shall promulgate administrative regulations by December 1, 1992, that contain standards governing the closure of public grade crossings. In adopting standards, the department shall request and consider written comments from affected local governments and shall consider that the number of redundant and inherently dangerous grade crossings in this state

should be reduced and that public safety will be enhanced by reducing the number of redundant and inherently dangerous grade crossings.

- (3) On or before July 1, 1993, and on or before July 1 of each of the next four (4) years, and as necessary thereafter, the department shall compose a list of grade crossings proposed to be closed. The list shall be developed by applying the standards set forth in the administrative regulations adopted under subsection (2) of this section. Grade crossings that are part of an abandonment, closing, or removal shall not be included in the list. The department shall notify the public officials having the necessary authority and the railway companies operating the railroads of the proposed closures. Either affected party may request a public hearing, and if requested, the department shall hold a public hearing and apply in its determination the information gained at the public hearing and administrative regulations developed under subsection (2) of this section. If after the hearing the department determines that closure is warranted, it may order the crossing closed.
- (4) If a request for a hearing on a particular crossing is not received within thirty (30) days of notice of the opportunity for a public hearing advertised pursuant to the requirements of KRS Chapter 424, the department shall order the crossing closed.

Effective: July 15, 1994

History: Amended 1994 Ky. Acts ch. 195, sec. 2, effective July 15, 1994. -- Amended 1992 Ky. Acts ch. 229, sec. 6, effective July 14, 1992. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 4356z-1, 4356z-10.

177.130 Hearing -- Order -- Plans, specifications, and estimates of cost.

If the department finds that a crossing proposed for vacation should be replaced with another grade crossing or a grade separation, it shall give at least ten (10) days' notice by certified mail, return receipt requested, to the railroad company and to the chief executive officer of the affected unit of local government of a public hearing to be held at a time and place stated in the notice. At the public hearing, the department shall consider whether or not the proposed grade separation or substitute crossing is reasonably necessary and the most advantageous method of enhancing the public convenience and necessity. If the department finds that the grade separation or substitute crossing is reasonably necessary, it shall make an order to that effect and furnish a copy thereof by certified mail, return receipt requested, to the railroad company and to the chief executive officer of the affected unit of local government. The order shall specify the location of the crossing to be substituted and whether it shall pass over or under the railroad tracks or intersect them at grade, the width of the crossing, and the angle at which the crossing shall meet and converge into the roadbed on either side of the railroad tracks. The order may direct the railroad company to prepare plans, specifications, and estimates of cost for the grade separation or substitute crossing in accordance with the general plan prescribed by the order. The order may provide that the plans, specifications, and estimates of cost shall be prepared by the department.

Effective: July 15, 1996

History: Amended 1996 Ky. Acts ch. 318, sec. 61, effective July 15, 1996. -- Amended 1992 Ky. Acts ch. 229, sec. 7, effective July 14, 1992. -- Amended 1980 Ky. Acts ch. 114, sec. 29, effective July 15, 1980. -- Amended 1974 Ky. Acts ch. 74, Art. IV, sec. 20(1); and ch. 315, sec. 21. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 4356z-2.

177.140 Railroad company to present plans and estimates of cost.

Within ninety (90) days after the entry of an order directing a grade separation or change, and the preparation of plans, specifications, and estimates of cost by the railroad company, the railroad company shall present to the department plans, specifications, and estimates of cost for the grade separation or change, including the necessary approaches thereto.

Effective: October 1, 1942

History: Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 4356z-3.

177.150 Final hearing -- Notice -- Final order -- Waiver of proceedings -- Appeal.

- (1) After receipt of the plans, specifications, and estimates of cost from the railroad company, the department shall give at least ten (10) days' notice by certified mail, return receipt requested, to the railroad company of a time and place for a conference with respect to the grade separation or change. If the department elects to prepare plans, specifications, and estimates of cost, it shall furnish copies thereof to the railroad company prior to or at the time it gives notice of the conference. At the conference, the department shall approve or modify the plans and specifications and shall consider and determine the method of doing the work, whether by the railroad company or by the department, or partly by one and partly by the other, and whether by contract or by the employees of the department or the railroad company, or both, or by any combination of these methods, and if by contract, the method and manner of advertising for bids, the time and place of opening the bids, the time when work shall be begun and completed, and all similar matters of an administrative nature. The department shall embody its conclusions in an order, a copy of which shall be sent by certified mail, return receipt requested, to the railroad company.
- (2) The department and any railroad company may agree by contract as to the method of eliminating any grade crossing or changing any existing overhead or underpass structure. In event of an agreement, all notices, hearings, and proceedings shall be deemed to have been waived, and the work of eliminating the grade crossing or making the change shall be performed in accordance with the terms of the contract, with the same effect as though the work was being performed pursuant to a final order of the department.
- (3) Any person aggrieved by an order issued pursuant to subsection (1) of this section may appeal to the department, and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B.

Effective: July 15, 1996

History: Amended 1996 Ky. Acts ch. 318, sec. 62, effective July 15, 1996. -- Amended 1980 Ky. Acts ch. 114, sec. 30, effective July 15, 1980. -- Amended 1974 Ky. Acts ch. 74, Art. IV, sec. 20(1); and ch. 315, sec. 22. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 4356z-4.

177.160 Rejection of bids -- Department may do work.

- (1) The department may by supplemental orders reject or order the rejection of all bids submitted for the work, or any part thereof, and require a readvertisement for bids. The department may reject all bids and elect to do the work itself, or partly by itself and by the railroad company, or by contractors, or by a combination of these

methods. If the department elects to do the work itself there shall not be charged to the railroad company any sum in excess of that it would have been required to pay had the contract been let to the lowest bidder.

- (2) In all cases where the work is let by the railroad company on contract, the work shall be done under the general supervision of the department.

Effective: October 1, 1942

History: Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 4356z-5.

177.170 Division of costs -- Payment.

- (1) The cost of preparing the plans, specifications and estimates of cost and of advertising for bids shall be paid wholly by the railroad company. The state shall pay one-half (1/2) of the cost of the work within the right-of-way lines of the railroad company, extended across the highway, and the railroad company shall pay the other one-half (1/2) of the cost of the work lying within said lines. The department shall pay the entire cost of all work lying beyond the right-of-way lines of the railroad.
- (2) As the work progresses the department shall furnish to the railroad company, and the railroad company shall furnish to the department, a monthly statement showing in detail all amounts expended in connection with the work. On or about the fifteenth of each month the state highway engineer shall prepare a statement showing the total amount expended to the close of the preceding month, the amount paid or expended by each party up to that time, and the amount due from the department to the railroad company or from the railroad company to the department. Upon receipt of the statement each party shall pay to the other the amounts shown to be due thereby.
- (3) All payments made on such monthly statements shall be considered only payments on account, and upon final completion of the work the state highway engineer shall prepare and furnish to the railroad company a statement showing the total cost of the work, the amount paid or expended by the department or the railroad company, and the amount due from one to the other. Each party shall be afforded reasonable opportunities to verify the statements of expenditures by the other, and the balance due as certified by the state highway engineer in his final statement shall be paid by one (1) party to the other promptly upon receipt of such final statement.
- (4) The work lying within the right-of-way of the railroad shall be maintained at the expense of the railroad company, but the railroad company shall not be required to keep up the surface of the roadbed of the highway.

Effective: October 1, 1942

History: Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 4356z-6, 4356z-11.

177.180 Highway engineer to approve contracts.

All contracts let by the railroad company under KRS 177.120 to 177.210 shall have the approval of the state highway engineer, in writing, indorsed on the contract.

Effective: October 1, 1942

History: Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 4356z-8.

177.190 Appeal by railroad company to Circuit Court.

- (1) Any railroad company dissatisfied with a final order of the department directing the elimination of any grade crossing or change of existing overhead or underpass structure, or any order modifying or amending the final order may appeal by filing a petition in the clerk's office of the Franklin Circuit Court in accordance with KRS Chapter 13B.
- (2) On the hearing of the appeal, the Circuit Court shall determine whether the elimination of the grade crossing, or the change in existing overhead or underpass structure, is reasonably necessary for the safety of the traveling public, and whether the plans and specifications prescribed by the order of the department are reasonably adequate to provide safety of operation for the trains of the railroad company, its employees and the public, and make reasonably adequate provisions for the future development of the railroad company's facilities.
- (3) If the court finds from the evidence that the elimination of the grade crossing or change in existing overhead or underpass structure is not reasonably necessary for the safety of the traveling public, it shall, by final judgment, enjoin the department from enforcing its final order.
- (4) If the court finds from the evidence that the elimination of the grade crossing or change in existing overhead or underpass structure is reasonably necessary for the safety of the traveling public, it shall, by final judgment, either order the railroad company to proceed with the work in accordance with the final order of the department, or in accordance with other plans and specifications prescribed by the court.

Effective: July 15, 1996

History: Amended 1996 Ky. Acts ch. 318, sec. 63, effective July 15, 1996. -- Amended 1976 Ky. Acts ch. 62, sec. 93. -- Amended 1974 Ky. Acts ch. 74, Art. IV, sec. 20(1). -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 4356z-7.

177.200 Appeal to Court of Appeals.

Either the department or the railroad company affected by the final judgment of the Circuit Court may appeal to the Court of Appeals in accordance with the Rules of Civil Procedure.

History: Amended 1976 Ky. Acts ch. 62, sec. 94. -- Amended 1974 Ky. Acts ch. 74, Art. IV, sec. 20(1). -- Amended 1960 Ky. Acts ch. 104, sec. 11, effective June 16, 1960. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 4356z-7.

177.210 Department may bring action to enforce order.

If any railroad company fails to comply with any order of the department issued under authority of KRS 177.120 to 177.210, the department may cause to be instituted in the Franklin Circuit Court, in the name of the state, an action to compel compliance with the order by mandatory process of the court.

Effective: October 1, 1942

History: Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 4356z-12.

189.560 Railroad crossings.

- (1) The operator of a vehicle shall stop and remain standing at a railroad grade crossing when any of the following conditions exist:
 - (a) A visible electric or mechanical signal device warns of the immediate approach of a railroad train;
 - (b) A crossing gate is lowered warning of the immediate approach or passage of a railroad train;
 - (c) An approaching train is visible and in hazardous proximity; or
 - (d) A human flagman signals the approach or passage of a train.
- (2) Whenever the tracks of any railroad or interurban railway over which trains or cars are regularly operated cross a state maintained highway at grade, the cabinet may designate that crossing as "unsafe," and no operator of any vehicle shall cross the crossing without first bringing his vehicle to a full stop at not less than ten feet (10'), nor more than thirty feet (30'), from the nearest rail of the tracks.
- (3) At crossings designated "unsafe," the cabinet shall place and maintain on each side of the tracks on the right side of the highway, at the marked stopping position, or, if the stopping position is not marked, on the pavement not more than 25' in advance of the track, an octagonal shape sign of a type and size currently approved for use by the cabinet bearing the word "Stop" in white letters not less than 10" in height.
- (4) The cabinet shall install the signs described in subsection (3), within sixty (60) days after the crossing is designated unsafe.
- (5) Subsections (2) to (4) shall not apply to grade crossings at which have been constructed and maintained gates, electric warning signals, or other automatic audible signals, or which are protected by watchmen.
- (6) The failure to observe subsections (2) to (5) shall not change the liability of any railroad or interurban railway in the trial of any civil case against the railroad or interurban railway for death or injuries, to person or property.
- (7) If subsection (6) is declared unconstitutional, then subsections (2) to (7) shall be ineffective.

Effective: July 14, 1992

History: Amended 1992 Ky. Acts ch. 229, sec. 3, July 14, 1992. -- Amended 1970 Ky. Acts ch. 86, sec. 1. -- Amended 1964 Ky. Acts ch. 65, sec. 5. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 2739g- 69w, 4353b-1 to 4353b-5.

189.561 Investigation of certain public grade crossings not equipped with gates -- Results -- Costs.

- (1) The cabinet shall investigate any public grade crossing not equipped with gates, with an average daily traffic of four thousand (4,000) or more, at which two (2) or more accidents involving a train and a vehicle traversing the crossing of a railroad and a highway have occurred in a consecutive five (5) year period, beginning January 1, 1986. The cabinet shall not consider nonfatal accidents caused by mechanical failure of the motor vehicle; accidents in which the operator of the highway motor vehicle was in violation of the provisions of KRS Chapter 189A; or other nonwarning signal related cause as set forth by the cabinet in an administrative regulation. If the cabinet installed active warning devices under its normal crossing safety improvement program since January 1, 1986, the five (5) year period for the

determination of accidents shall begin at the time of this installation. The cabinet shall request written comments from the affected local government prior to reaching a decision on a particular crossing. After receiving a report from the affected local government supporting the installation of gates, the cabinet, utilizing matching funds available from the Federal Highway Administration's rail/highway grade crossing safety program, shall program the installation of gates at the crossing. Locations which do not receive a favorable report from the affected local government shall be reconsidered at the time of the next update of the five (5) year accident period.

- (2) The cost of installing gates shall be the responsibility of the cabinet and railroad in accordance with KRS 277.065 and shall not be charged to any unit of local government.

Effective: July 15, 1994

History: Amended 1994 Ky. Acts ch. 195, sec. 1, effective July 15, 1994. – Created 1992 Ky. Acts ch. 229, sec. 1, effective July 14, 1992.

189.562 Duty of railroad company when warning device incorrectly remains activated.

If a warning device at a grade crossing is activated, for a period of thirty (30) minutes or more, in the absence of an approaching train, due to track maintenance or train movements in the vicinity, and the railroad company responsible is unable to disengage the warning device, then the company shall position a flagman at the affected intersection.

Effective: July 14, 1992

History: Created 1992 Ky. Acts ch. 229, sec. 2, effective July 14, 1992.

189.565 Operator of motor vehicle used in transporting inflammable liquids or explosives to stop vehicle at railroad crossings -- Exceptions.

The operator of any motor vehicle used in the transportation of inflammable liquids or explosives shall stop such motor vehicle before crossing at grade the main track of any railroad or interurban electric railway, except where the crossing is a guarded crossing protected by gates or a flag controlled crossing or operated by an employee of the railroad or interurban company. The stop shall be made at not less than ten feet (10') nor more than thirty feet (30') from the nearest track to be crossed. After making the stop, the operator shall look carefully in each direction for approaching cars or trains, and shall not start his vehicle until he has ascertained that no cars or trains are approaching in either direction.

Effective: May 18, 1956

History: Created 1956 Ky. Acts ch. 35, sec. 1, effective May 18, 1956.

277.065 Allocation of costs of eliminating grade crossings between railroad and governmental unit.

The entire construction costs of projects for the elimination of hazards of railroadhighway crossings, including the separation or protection of grades at crossings, the reconstruction of existing railroad grade crossing structures, and the relocation of highways to eliminate railroad grade crossings which may be paid for in whole or part

from state funds, including, but not limited to, the cost of preparing the plans and specifications and supervising the improvement, the acquisition of necessary property, the construction of approaches, drainage structures, roadways and pavements, accommodations for public utilities, and damages paid to abutting property owners, shall be allocated between the railroad involved, and the governmental unit or units involved in the same ratio as the net benefit received by such railroad from the project bears to the net benefit accruing to the public using the highway, and in no case shall the net benefit to any railroad or railroads be deemed to be more than ten percent (10%) of the total benefit resulting from the project. The Department of Highways shall be responsible for determining the proportion of the benefits derived by the railroad from the project, and shall fix standards for the determining of said benefits which shall be consistent with the standards adopted for similar purposes by the United States Bureau of Public Roads under the Federal-Aid-Highway Act of 1944. The cost of maintenance of all structures for the elimination of railroad grade crossings, and of installations for the protection of existing grade crossings, constructed or installed under this section, shall be borne by the governmental unit or units constructing them. Before any state funds shall be expended for any project constructed under this section, a contract shall be entered into between the railroad and the governmental unit or units involved setting forth the duties of each as to construction and maintenance of the project.

Effective: June 19, 1958

History: Created 1958 Ky. Acts ch. 78, sec. 1, effective June 19, 1958.

277.160 Signs at railroad crossings -- Imitation forbidden.

- (1) Every railroad company shall cause signal boards to be placed and constantly maintained at each public highway where it is crossed by the railroad track at the same level, except that such boards need not be put up in any city unless required by the city authorities. The boards shall be well supported, and shall be placed so as to be easily seen by travelers and not to obstruct travel, and shall contain on each side, in capital letters at least five (5) inches high, the words "Railroad Crossing."
- (2) No person shall erect on or near a public highway any signboard or other contrivance similar to or like the danger signals used by railroads, interurbans and electric railway companies at road crossings.

Effective: October 1, 1942

History: Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 773, 773a-1.

277.170 Flagman or gate at crossing of railroad with highway.

If the Kentucky Transportation Cabinet determines it is in the public interest for a gate to be erected or maintained or a flagman stationed at any highway crossing within one mile of the corporate limits of any city, the cabinet shall give the superintendent or manager of the railroad written notice that a gate or flagman is required. If a gate is required, the notice shall prescribe the time within which the gate shall be erected, the character of gate required, and shall designate the hours during which a man shall be kept in charge of the gate. If a flagman is required, the notice shall designate the hours during which he shall be kept at the crossing. The railroad company shall comply with

the provisions of the notice. The cabinet may authorize the discontinuance of the gate or flagman whenever, in its judgment, the public interest no longer requires it.

Effective: December 1, 2000

History: Amended 2000 Ky. Acts ch. 417, sec. 12, effective December 1, 2000. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 774.

277.180 Railroad crossings, when trains to stop before reaching.

Whenever railroad lines cross each other in this state, each train shall be brought to a full stop at least fifty (50) feet before it reaches the crossing, unless the crossing is regulated by a derailing switch or other safety appliance that prevents collisions at crossings, or a flagman or watchman is stationed at the crossing and signals that the train may cross in safety.

Effective: October 1, 1942

History: Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 775.

277.190 Bell to be rung or whistle sounded at crossings -- Local government regulation of sounding train whistles at night.

- (1) Every railroad company shall provide each locomotive engine running over any of its lines with a bell of ordinary size and a whistle. The bell shall be rung or the whistle sounded at a distance of at least fifty (50) rods from the place where the track crosses upon the same level any highway or crossing where a signboard is required to be maintained. The bell shall be rung or the whistle sounded continuously or alternately until the engine has reached the highway or crossing except as provided in subsection (2) of this section.
- (2) A city, county, urban-county, or charter county government may regulate the sounding of train whistles at night if the city, county, urban-county, or charter county government enacts an ordinance adopting the provisions of Emergency Order Number 15, Notice Number 4, issued by the Federal Railroad Administration on August 31, 1993. If the Federal Railroad Administration updates the requirements of Emergency Order 15, a city, county, urban-county, or charter county government that has adopted the provisions of Emergency Order 15 shall by ordinance adopt the most recent federal requirements governing the sounding of train whistles.

Effective: July 15, 1994

History: Amended 1994 Ky. Acts ch. 195, sec. 3, effective July 15, 1994. -- Amended 1992 Ky. Acts ch. 229, sec. 5. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 786.

277.300 Notice of fatal accident to be given to Transportation Cabinet.

If any accident on a railroad is attended with loss of life, the company operating the road on which the accident occurred shall notify the Kentucky Transportation Cabinet within five (5) days after the accident occurred and shall furnish the cabinet all information requested by it concerning the cause of the accident.

Effective: December 1, 2000

History: Amended 2000 Ky. Acts ch. 417, sec. 14, effective December 1, 2000. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 777.

277.350 Criminal trespass on railroad property.

- (1) It shall be unlawful for any person without the consent of the railroad:
 - (a) To go upon the track, property, or right-of-way of a railroad, other than to pass over the track, property, or right-of-way at a public or private crossing; or
 - (b) To willfully ride, drive, or lead any animal or otherwise contrive for any animal to go over the track, property, or right-of-way at a public or private crossing.
- (2) The provisions of this section shall not apply to any section of railroad track that has been legally abandoned and is not being used for railroad purposes.
- (3) Any person violating this section shall be guilty of criminal trespass in the third degree and shall be subject to a maximum fine of twenty-five dollars (\$25) for the first violation, a maximum fine of fifty dollars (\$50) for the second violation, and a maximum fine of one hundred dollars (\$100) for the third and any subsequent violation.

Effective: July 15, 1994

History: Created 1994 Ky. Acts ch. 306, sec. 2, effective July 15, 1994.